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674506-2035.2

REMARKS

Applicants respectfully request entry of the Amendment after allowance herein which amends claims 96-98, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents. It is respectfully submitted that no new matter is added through the herein amendment, and that the claims, as originally presented and as herein presented, are patentably distinct over the prior art cited by the Examiner, and that these claims are and were in full compliance with the requirements of 35 U.S.C. §112. The claims presented herein, are not amended for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112. Rather, these claims are amended simply for clarification and to round out the scope of protection to which Applicants are entitled.

Under 37 C.F.R. §1.312 and MPEP 714.16, an Amendment after allowance may be entered at the discretion of the Primary Examiner, provided the Amendment is filed either prior to or concurrently with payment of the issue fee. In addition, it is required that the amendment must fully describe "(A) why the amendment is needed; (B) why the proposed amended or new claims require no additional search or examination; (C) why the claims are patentable; and (D) why they were not presented earlier." MPEP 714.16.

Applicants respectfully submit that the amendment herein serves only to clarify the claims in view of the Declaration from Manon Cox filed March 24, 2004. The test results described in the Declaration demonstrate that the erythropoietin has an *in vivo* activity, however the activity described therein, namely the activity of at least 200,000 U/mg or at least 500,000 U/mg was obtained during *in vitro* testing, see for example, paragraph 4a on page 3 of the Declaration. Accordingly, the claims have been amended herein to ensure an accurate reading thereof, namely that the EPO of the present invention has *in vivo* activity, and an activity of at least 200,000 U/mg or at least 500,000 U/mg.

It is respectfully submitted that the amendment to claims 96-98 requires no additional search or examination. The claims do not require any additional search or examination as the essence of the claims remains unchanged; the amendment merely corrects an error in the wording of the claims which would have been obvious to one of skill in the art reading those claims as one would not obtain the activity results recited therein except in an *in vitro* assay. As the Examiner has previously searched and examined the claims both with and without the recitation of *in vivo* activity, it is respectfully submitted that the Examiner has applied all of the

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relevant references to the present application, and that the amendment herein made for clarity purposes only does not change the scope of the claims or require an additional search.

The previously pending claims were allowed on the basis that Quelle *et al.* and Wojchowski *et al.* produced an EPO in *Spodoptera frugiperda* that was not active *in vivo*, and that none of the remaining references cited against the Applicants taught the EPO of the present invention. Accordingly, it is respectfully submitted that the claims as amended herein are still patentable over the references cited by the Examiner, especially over Quelle *et al.* and Wojchowski *et al.*, as the amended claims still require that the EPO have *in vivo* activity, which therefore renders the claims novel and non-obvious over Quelle *et al.* and Wojchowski *et al.*

It is respectfully submitted that the amendments herein were not made previously as Applicants only became aware of the error in the claims while reviewing the application in anticipation of issuance of a patent therefrom.

Accordingly, consideration and entry of the herein Amendment after allowance is respectfully requested as the amendment does not require a new search or further examination and as the claims remain patentable over the references cited by the Examiner.

CONCLUSION

Applicants respectfully request that the herein amendment after final be entered as the amended claims require no further examination or search, and as the claims remain patentable over the references cited by the Examiner. Issuance of a further Examiner's Reasons for Allowance indicating the same is respectfully requested.

Respectfully submitted,

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